

Letter of Findings Number: 04-20110623
Use Tax
For Tax Years 2008-11

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ISSUE

I. Use Tax–Resale Exemption.

Authority: IC § 6-2.5-3-2; IC § 6-8.1-5-1; [45 IAC 2.2-1-1](#); IC § 6-2.5-5-8.

Taxpayer protests the imposition of use tax on certain purchases.

STATEMENT OF FACTS

Taxpayer is an Indiana business. In the course of an audit, the Indiana Department of Revenue ("Department") determined that Taxpayer had purchased some tangible personal property, but had not paid sales tax at the time of purchase. The Department therefore issued proposed assessments for use tax and interest for the tax years 2008, 2009, 2010, and 2011. Taxpayer paid the proposed assessments for use tax. However, Taxpayer protests that its purchases were for resale only and were not subject to sales or use tax. Taxpayer provided documentation and analysis in support of its protest. An administrative hearing was held and this Letter of Findings results. Further facts will be supplied as required.

I. Use Tax–Resale Exemption.

DISCUSSION

Taxpayer protests the imposition of use tax on its purchases of gift certificates from the corporate office during the tax years 2008, 2009, 2010, and 2011. The Department based its determination that the gift certificates were subject to use tax on the understanding that Taxpayer used the gift certificates as a marketing tool to increase sales. Taxpayer states that the gift certificates were purchased from the corporate office at the stated amount on the certificate for resale. Also, Taxpayer states that the gift certificates were sold to the end consumer at the stated amount with no mark-up. The Department notes that the burden of proving a proposed assessment wrong rests with the person against whom the proposed assessment is made, as provided by IC § 6-8.1-5-1(c).

The use tax is imposed under IC § 6-2.5-3-2(a), which states:

(a) An excise tax, known as the use tax, is imposed on the storage, use, or consumption of tangible personal property in Indiana if the property was acquired in a retail transaction, regardless of the location of that transaction or of the retail merchant making that transaction.

Also, [45 IAC 2.2-3-4](#) provides:

Tangible personal property, purchased in Indiana, or elsewhere in a retail transaction, and stored, used, or otherwise consumed in Indiana is subject to Indiana use tax for such property, unless the Indiana state gross retail tax has been collected at the point of purchase.

Therefore, when tangible personal property is acquired in a retail transaction and is stored, used, or consumed in Indiana, Indiana use tax is due if sales tax has not been paid at the point of purchase. In this case, the Department determined that Taxpayer had acquired tangible personal property in retail transactions and used that property in Indiana without paying sales tax at the point of purchase. The Department therefore issued proposed assessments for use tax, as provided by [45 IAC 2.2-3-4](#).

Taxpayer protests that the sales in question were for resale and were not subject to use tax. IC § 6-2.5-5-8(b), provides in relevant part:

Transactions involving tangible personal property other than a new motor vehicle are exempt from the state gross retail tax if the person acquiring the property acquires it for resale, rental, or leasing in the ordinary course of the person's business without changing the form of the property.

In the course of the protest process, Taxpayer provided documentation supporting its position that the gift certificates were purchased from the corporate office at the stated amount and were sold to the end consumer for the same stated amount. Also, Taxpayer states that sales tax was paid by the corporate office for the materials used to manufacture the gift certificates. After a review of the documentation, Taxpayer has established that the sales in question were for resale and so were eligible for the exemption provided under IC § 6-2.5-5-8(b). Taxpayer has met the burden of proving the imposition of use tax on its purchases of gift certificates incorrect, as required by IC § 6-8.1-5-1(c).

In conclusion, Taxpayer has met its burden of proving the proposed assessment of use tax on its purchases of gift certificates incorrect. The gift certificates were purchased for resale, as provided by IC § 6-2.5-5-8(b). A supplemental audit will remove the payments for gift certificates and a refund will be granted.

FINDING

Taxpayer's protest is sustained as described above.

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